IN THE HIGH COURT OF BOMBAY AT GOA, PANAJI-GOA.

FIRST APPEAL NO. 287 OF 2002
WITH
FIRST APPEAL NO. 166 OF 2003

FIRST APPEAL NO. 287 OF 2002

Sadashiv B. Nadkarni
"Bhaskar" Vasudha Housing
Coly, St. Cruz, Bambolim
Complex 403 202. .... Appellant

Versus

1. Deputy Collector (Rev)
   Margao.

2. The District & Sessions Judge,
   South Goa, Margao. .... Respondents

FIRST APPEAL NO. 166 OF 2003

1. Deputy Collector (Revenue),
   Margao.

2. The District and Sessions Judge,
   South Goa, Margao-Goa. .... Appellants

Versus

Sadashiv D. Nadkarni,
1st Floor, B-1 Right,
Cardozo Building,
Near Bus Stand,
Patto, Panaji-Goa. .... Respondent

Shri R.G. Ramani, Advocate for Appellant in First Appeal No. 287 of 2002 and for Respondent in First Appeal No. 166 of 2003.

Ms. Leena Dharwadkar, Additional Government Advocate for Respondents in First Appeal No. 287 of 2002 and for Appellants in First Appeal No. 166 of 2003.

CORAM : **P.V. KAKADE, J.**

DATE : **7th OCTOBER, 2006**

ORAL JUDGMENT :

Both these appeals arise out of common award granted by the Additional District Judge, Panaji under reference under Section 18 of the Land Acquisition Act. First Appeal No. 287 of 2002 is filed by the claimant as he was not satisfied with the award granted by the Additional District Court, whereas First Appeal No. 166 of 2003 is filed by the State against the enhanced compensation awarded by the Additional District Judge in Land Acquisition reference no.37/1995. Hence, both the appeals are being disposed of by this common Judgment.

2. Facts giving rise to the dispute in a nutshell are that vide notification published in the Official Gazette dated 21/05/1992, under Section 4(1) of the Land Acquisition Act (hereinafter referred to as the 'said

Act'), the State Government acquired land admeasuring 3900 sq. metres from Survey Nos. 25/1 and 25/2 (3500 sq. metres from Survey No. 25/1 and 400 sq. metres from Survey No. 25/2) of Cotarli Village of Sanguem Taluka for public purpose, on behalf of the District and Sessions Court, South Goa, Margao. By award dated 30/06/1994, the Land Acquisition Officer awarded Rs. 4/- per sq. metre as compensation for 3500 sq. metres of acquired land from Survey No. 25/1 and Rs. 3.60 per sq. metre as compensation for 400 sq. metres of acquired land from Survey No. 25/2 and further compensation of Rs. 300/- for two small cashew trees existing in the acquired land. Not being satisfied with the compensation awarded by the Land Acquisition Officer, the claimant filed an application under Section 18 of the Land Acquisition Act before the Land Acquisition Officer, which gave rise to the reference, which ultimately landed in the District Court, Panaji.

3. The applicant claimed Rs. 60/- per sq. metre as the market value of the acquired land and Rs. 1,000/- towards the cashew trees. Further, according to the applicant, on account of the acquisition, an area of 418 sq. metres of land of the applicant has been severed and rendered completely useless and for this purpose, the applicant claimed

compensation at the rate of Rs. 60/- per sq. metre.

4. The parties went in trial. The learned Additional District Judge, while adjudicating the dispute on merits, on the basis of evidence laid by both the parties, came to the conclusion that though the applicant was not entitled to the enhanced compensation at the rate of Rs. 60/- per sq. metre, he was entitled to the enhanced compensation at the rate of Rs. 15 per sq. metre. Same was the finding recorded in respect of severance charges for the balance land admeasuring 418 sq. metres. However, it was held that the applicant was not entitled for Rs. 1,000/- towards the trees in the land.

Hence the present appeals by both the sides.

5. It is admitted position that the acquired land falls in settlement zone which is mentioned in the award itself. The acquired land lies in front of the existing court complex of Sanguem between the compound wall of the court complex and the main public road Sanguem-Curchorem. The nature of the land is Bharad type. The evidence on record shows that the acquired land is within the Municipal Council of Sanguem. The distance from Sanguem town is about 2.5 kms. Since court building was already

existing and being by the side of the main road, it can be easily presumed that regular transport facility, electricity, tap water and telephone facilities were available to the acquired land. AW 1 has produced two sale deeds executed by him in respect of the land from Survey Nos. 25/1 and 25/2 that is part of the acquired land itself. First sale deed is dated 12/10/1989 which is at Exhibit 14, by which AW 1 and others sold an area of 3720 sq. metres from Survey No. 25/1 to one Shri S. Surlakar for Rs. 1,11,600/- i.e. at the rate of Rs. 30/- per sq. metre, for the purpose of construction of house. Said Surlakar has already constructed house therein. The plot was about 17 metres away from the said Sanguem-Curchorem main road. Evidence of AW 1 shows that it was possible that Surlakar did not want to purchase the said strip of 17 metres from the road because no development was possible. Thereafter, sale deed dated 09/04/1992 (Exhibit 39) was executed and same Shri Surlakar purchased an area of 2175 sq. metres of land from Survey No. 25/2, which is the said strip of land lying between the earlier plot purchased by him from Survey No. 25/1 and the main road, for the price at the same rate of Rs. 30/- per sq. metre. In this regard, AW 1 has tried to explain that at the time of previous sale deed, it was already agreed that they would be selling the plot of sale deed (Exhibit 39) to Surlakar at the same rate and the sale deed was not executed due to

technical problems which were subsequently removed and the property was sold at the rate of Rs. 30/- per sq. metres.

6. Now, on this background, it is to be noted that the land of Survey No. 25/2 is shown as paddy land. However, it must be taken into account that it was freehold land belonging to the claimant as on the date of the acquisition and AW 1 stated that no paddy was cultivated therein. In reality, there should be no difference in the lands from Survey Nos. 25/1 and 25/2 which are touching one another and, therefore, in my view there was no justification for the Land Acquisition Officer to award Rs. 4/- per sq. metre to the acquired land from Survey No. 25/1, but reduce it to only Rs. 3.60 per sq. metre to the acquired land from Survey No. 25/2. The ground given by the Land Acquisition Officer in his award, therefore, appears to be without any justification.

7. At this stage, it must be noted that one witness was examined on behalf of the State. Said witness one Mr. D.G.P. Vaidya, who was working as a Superintendent, District Court, Margao gave evidence on behalf of the State and in doing so produced some sale deeds in order to show that there were some sale instances of much lower price in the

vicinity. However, the peculiar fact involved in this dispute shows that the land which is acquired as a part and parcel of the two sale instances are relied upon by the claimant and, therefore, those are the only documents which can be taken into account for the purpose of considering the evidence in order to fix the proper market price of the impugned property. On the other hand, the said instances which are being produced on record through Superintendent, District Court, Margao can not be taken into account for the plain reason that the lands involved therein are at a distance of 2 to 3 kms. from the impugned property which were acquired. Secondly, the Superintendent of the District Court can hardly be said to be proper witness on behalf of the State, as he cannot be said to have any personal knowledge of the situation which prevailed at the relevant time and, therefore, I am inclined to hold that evidence of said witness is required to be discarded.

8. Turning back to the evidence on record, it is to be noted that the acquired land is a strip of land. It was submitted on behalf of the State by the learned Additional Government Pleader that so far as sale deeds are concerned, sale instances are of the year 1989 and such transactions could not be held to be between the willing seller and willing purchaser because the purchaser of that land had no option but to purchase the property.

However, this aspect is negated by the fact that the said sale deed was proved to be executed on the basis of agreement of the year 1989 and it was stated that it was not executed due to some technical aspect, which was subsequently removed and, therefore, it cannot be said that sale instance of the year 1992 which was prior to the date of notification under Section 4(1) of the said Act cannot be relied upon. Moreover, it must also be noted that if the strip of land from Survey No. 25/2 which was between the house of Shri Surlakar situated in Survey No. 25/1 and the public road were useless then Shri Surlakar would not have purchased it at all. If the strip of land from Survey Nos. 25/1 and 25/2 between the Sanguem court complex in Survey no. 25/1 and the said public road was useless and valueless, then the acquiring department should never have acquired the same. The record further shows that this is the land which has all the facilities like electricity, water pipe line and telephone as well as frequent transport, just adjacent to it and there was court complex, judge's bungalow adjacent to it and further on the other side of the road, a crusher is located. The acquired land had length towards the road of 156 metres, towards the court of 136 metres and the breadth towards Cacora village of 19 metres plus 4 metres and towards Sanguem of 32 metres plus 4 metres. At the time of acquisition, there was no proposal for widening of the said public road except to the extent of 460

sq. metres of land from Survey No. 25/1 which is quite clear from the letter dated 05/09/1990 (Exhibit 18) sent by the P.W.D. to the District and Sessions Judge, Margao. Hence, it is clear that presently acquired land lies closely beyond the land proposed to be acquired by P.W.D. for road widening.

9. Coming to the expert evidence of AW 2, Shri Purshottam Dalvi, the Surveyor and Engineer, it must be noted that his evidence is clear enough to show that he is truly expert and experienced witness in the given field who has explained position of the acquired land by stating that along the road, the acquired land is 156 metres long and on the western side it is 136 metres long and on the northern side it is 19 metres long plus 4 metres left for road widening and on southern side it is 32 metres plus 4 metres, again left for road widening. According to him, the acquired land cannot be treated only as a strip of land. On the basis of P.W.D. letter dated 05/09/1990 he has stated that the construction in the acquired land should have minimum set back of 18.00 metres from the centre of P.W.D. road and, therefore, according to him such restriction is applicable to highways and major district roads, notified as such in the Government Gazette and in Municipal area the said restriction is reduced to 13 metres from the centre

of the road. Though such notification was directed to be produced, and was not produced, still it does not mean that acquired land has no value and has no use at all and, therefore, the argument advanced on behalf of the State in this regard cannot be accepted. The evidence of AW 1, however, shows that in the acquired land the bungalow for residence of a Judge has been constructed. However, it may not be correct because the land which was acquired was for the purpose of court complex, but such statement cannot diminish the value of the property by itself. The expert witness has valued the acquired land at Rs. 45/- per sq. metre which valuation is based on the evidence that the acquired land could have been used for construction of house and judges bungalow was constructed therein. Therefore, as recorded by the learned Additional District Judge, such valuation cannot be taken into account.

10. The learned Additional District Judge, as it appears from the record, has rightly accepted the evidence in respect of two sale instances of the part of the same properties wherein the property was sold at the rate of Rs. 30/- per sq. metre. However, quite inexplicably, the learned Additional District Judge has come to the conclusion that 50% deduction in the price of Rs. 30/- per sq. metre should be adequate market value of the entire

acquired land. In my considered view, there is absolutely no justification or explanation or reasoning given as to why the deduction of 50% has been allowed by the learned Additional District Judge. Perhaps he was of the view, as could be gathered from the contents of para 16 of his judgment, that purchaser Surlakar must have purchased the property at the rate of Rs. 30/- per sq. metre because he wanted the advantage of that strip of land for his house and hence did not want someone else should own that land between public road and his house. Further, this position is properly explained and not controverted by any other evidence to the effect that in fact the said land was to be sold at the same rate in the year 1989 but for some technical problems which were later on removed and, therefore, the price of the said property itself was fixed in the year 1989 and not in the year 1992. Under the circumstances, I am of the considered view that deduction of 50% of the value from Rs. 30/- per sq. metre is not at all justified nor explained from the judgment of the lower Court or from the evidence on record. Therefore, I am of the view that the proper market value of the said land would be Rs. 30/- per sq. metre.

11. Taking into account, the claim of severance charges for the area of 418 sq. metres, I do not see any reason why any different criteria should

be made applicable to the said severed land and, therefore, I hold that claimant should be entitled to severe compensation at the same rate i.e. Rs. 30/- per sq. metre.

12. The learned Additional District Judge has not accepted the claim of the claimant of Rs. 1,000/- towards trees, obviously due to the want of sufficient evidence in that regard. I would not like to disturb that finding and shall confirm the order of rejection of claimant of Rs. 1,000/- for compensation towards trees which were standing in the land.

13. For the reasons recorded above, the First Appeal No. 166 of 2003 filed by the State stands dismissed with no order as to costs.

14. First Appeal No. 287 of 2002 is hereby partly allowed with no order as to costs. The appellant/claimant shall be entitled to the enhanced compensation for the acquired land at the rate of Rs. 30/- per sq. metre. Similarly, the appellant/claimant shall also be entitled for severance charges towards the balance land admeasuring 418 sq. metres from Survey No. 25/1 at the rate of Rs. 30/- per sq. metre. Remaining order of the Additional District Judge stands confirmed including entitlement of the

appellant to all the statutory benefits under the provisions of the Land Acquisition Act on the basis of compensation craved at the rate of Rs. 30/- per sq. metre.

P. V. KAKADE, J.

NH